



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kings Point Industries, Inc.

File: B-229007

Date: December 14, 1987

DIGEST

1. An all or none bid qualification should be construed as restricting award to all or none of the line items of a solicitation unless the context and circumstances indicate otherwise.

2. Where the language of a message sent to an agency plainly evinces an intent that an "all or none" qualification contained in bid was intended to apply to the total quantities of an individual line item, rather than to all of the line items in the aggregate, the bidder may not subsequently revise the qualification to suit its own purpose of receiving the award of all line items for which it bid.

DECISION

Kings Point Industries, Inc. protests the proposed split award of a contract for Multi Line Loops under solicitation number DAK01-87-B-A148 issued by the U. S. Army Troop Support Command.

We deny the protest.

The solicitation was issued as a total small business set-aside for three different contract line items, 0001AA, 0002AA, and 0003AA. The solicitation also incorporated by reference the Federal Acquisition Regulation provision found at 48 C.F.R. § 52.214-10 (1986), which discusses two separate instances in which an offeror might wish to qualify an offer. This provision states as follows:

"The government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the schedule, offers may be submitted for quantities less than those specified. The government reserves the right to

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make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer."

Thus, under the language of the clause, a bidder could restrict the government's right to award anything less than the specific group of items designated by the bidder, or specific quantities within any given item as designated by the bidder. These bid qualifications are generally designated as "all or none" qualifications.

Kings Point's bid consisted of its basic bid submission and a series of messages sent and received prior to bid opening. The first message, dated May 12, 1987, stated:

"Reduce our prices as follows:

"Item 0001AA by 14.77 each (Fourteen Dollars Seventy Seven Cents, Item 0002AA by 14.57 each (Fourteen Dollars Fifty Seven Cents), Item 0003AA by 76.10 each (Seventy Six Dollars Ten Cents)

"ALL OR NONE TO BE AWARDED

"ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED"

Kings Point's second and third messages do not affect the issue involved in this case.

Four bids were received as follows:

<u>Bidder</u>	<u>Item 0001AA</u>	<u>Item 0002AA</u>	<u>Item 0003AA</u>
Air Systems	243,318.89	209,994.12	377,950.20
TOTAL (including 9,360.90 transportation)			840,624.11
Aero	245,981.96	148,400.00	354,736.20
TOTAL (including 24,085.69 transportation)			773,203.85
Kings Pt	227,218.03	206,696.34	385,294
TOTAL (including 18,985.32 transportation)			838,193.69
Pioneer	227,034.37	211,057.92	357,700
TOTAL (not including transportation)			795,792.29

After bid opening, Kings Point protested to the agency that Pioneer was a large business not entitled to any award under the set-aside. In a message written on June 4, 1987 to the contracting officer, Kings Point stated, "we are the responsive small business low bidder for item 1AA. . . . Therefore, we protest any award of this item to any firm

other than ourselves. . . ." Pioneer was found to be a large business, and its bid was rejected. Subsequently, Aero, the low responsive bidder for items 0002AA and 0003AA, was determined not a responsible prospective contractor, leaving Kings Point as the low responsive bidder for items 0001AA and 0002AA (the Small Business Administration declined to issue a certificate of competency for Aero), and Air Systems low for item 0003AA. The Army proposes to award a contract to Kings Point for items 0001AA and 0002AA, and to Air Systems for line item 0003AA, based on its low bid for that item. Kings Point, however, the low bidder on the aggregate of the three line items, relies on its bid qualification "all or none to be awarded" to argue that it should be awarded all three items.

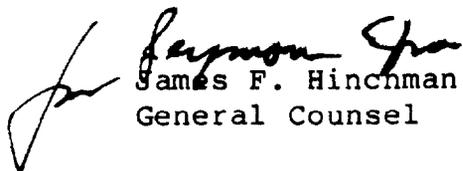
Kings Point contends that the qualification "all or none to be awarded" should be understood to mean "all line items or none to be awarded." The Army, however, believes that the "all or none" qualification is subject to another interpretation restricting award to all or none of the quantities of each of the three contract line items, as well as restricting the award to all of the line items.

We agree with Kings Point that in most circumstances, a reasonable interpretation of its all or none qualification would be that it intended to limit award to all or none with respect to the group of items. Here, however, Kings Point's agency protest urging award to it for a single line item contradicts that position. We think it is now disingenuous for Kings Point to argue that its purpose in sending its original June 4 protest was only to "excise Pioneer's nonresponsive bid which, under the law, was not eligible for consideration." The plain meaning of its statement "we protest any award of this item [001AA] to any firm other than ourselves", in the face of its all or none qualification, could only mean that it intended the qualification to apply on a line item rather than on an aggregate basis. Within the context of the time the June 4 message was sent (Kings Point was not the apparent low bidder on an aggregate basis), "excising" Pioneer's bid would have served no useful purpose other than to obtain award for the single item for which it was the apparent low bidder at the time.

We believe that an "all or none" qualification should be construed as restricting award to all or none of the line items, unless the context and circumstances indicate otherwise. See Isometrics, Inc., B-208898, Dec. 30, 1982, 82-2 CPD ¶ 588. Here, Kings Point made clear that it was not, in fact, bidding on an all or none basis in the aggregate. Kings Point should not now be permitted to revise the "all or none" qualification when it becomes convenient for its purposes. Under the circumstances, we

for its purposes. Under the circumstances, we find that the contracting officer is correct in proposing to split the award.

The protest is denied.

James F. Hinchman
General Counsel